

Appl. No. 10/049,980
Amdt. dated November 19, 2004
Reply to Office Action of September 1, 2004

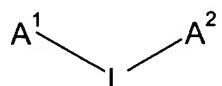
REMARKS/ARGUMENT

This amendment responds to the Office Action of September 1, 2004.

Claims 1 and 2 are pending in the application with claim 3 having been canceled, and claims 1 and 2 having been amended.

Claims 1 and 2 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-12 of recently allowed Application No. 10/049,976. According to the Examiner: "Although the conflicting claims are not identical, they are not patentably distinct from each other because methods of controlling the pest as presently claimed were claimed in the said application. The compounds are generically disclosed and overlap the presently claimed compounds used for the control of pests."

Claim 1 has been amended to be directed to a method of combating plant fungi by using a compound of general formula I or salts thereof;

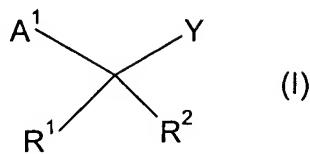


(I)

In this general formula, the linker between A^1 and A^2 is L, which is *three-atom linker* defined as being of the formula -N(R³)N(R⁴)C(=X)-.

Claims 10 to 12 of U.S. Patent Application No. 10/049,976 cover a method of combating phytopathogenic fungi by using a compound of formula (I)

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in which Y is defined as being L-A² or L¹-A³ in which L is a 3-atom linker and L¹ is a 4-atom linker.

Thus, in this general formula, the linker between A¹ and A²/A³ is -C(R¹R²)-L- / -C(R¹)R²-L¹-, which means that the linker is a 4- / 5-atom linker.

By comparing these two definitions, it can be seen that there is no overlap between amended claim 1 of the present application and claims 10-12 of the U.S. Patent Application No. 10/049,976 and that the subject matter of each of these patent applications is distinct.

Accordingly, it is requested that the provisional rejection of claims 1 and 2 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-12 of Application No. 10/049,976 be withdrawn.

Claims 1 and 2 have been rejected under 35 U.S.C. 103(a) as being unpatentable over AN 1988:524419, HCAPLUS, abstract of EP 27001.

Claim 1 has been amended to be directed to a method of combating plant *fungi* by using a compound of the general formula (I).

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The art cited by the Examiner teaches the use of 2-pyridyl derivatives as insecticides or acaricides. This document remains silent regarding the use of these compounds as fungicides. It is well known by the skilled artisan that there is no direct link between an insecticidal or an acaricide activity and a fungicide activity. Thus, a person of ordinary skill in the art reading the cited reference would not have been motivated to prepare compounds of general formula (I) of the present invention in the expectation that they would show a fungicide activity. The teaching of the reference therefore does not render obvious the invention defined by claim 1 as now amended.

Accordingly, it is requested that the rejection of claims 1 and 2 under 35 U.S.C. 103(a) as being unpatentable over AN 1988:524419, HCAPLUS, abstract of EP 27001 be withdrawn.

In view of the foregoing, it is submitted that this application is now in condition for allowance and an early Office Action to that end is earnestly solicited.

Respectfully submitted,



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